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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

EMILIO ESPINDOLA, JR.,

Defendant and Appellant.

E072426

(Super.Ct.No. 16CR023472)

OPINION

APPEAL from the Superior Court of San Bernardino County. Bryan K. Stodghill,
Judge. Affirmed.

Michaela Dalton, under appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Seth M.
Friedman, Deputy Attorneys General, for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On June 3, 2016, a felony complaint charged defendant and appellant Emilio Espindola, Jr., with transportation of a controlled substance under Health and Safety Code section 11352, subdivision (a) (count 1). Four months later, defendant filed a motion to suppress evidence under Penal Code¹ section 1538.5. On March 9, 2017, the trial court held a hearing on the motion to suppress with the preliminary hearing. The court denied defendant's motion.

On May 17, 2018, defendant filed a second section 1538.5 motion to suppress. The People filed an opposition stating that the motion should be denied because defendant failed to establish changed circumstances; defendant withdrew the motion to suppress on the date of the hearing.

On March 12, 2019, defendant pled no contest to count 1. The trial court sentenced defendant to three years in state prison, suspended, pending successful completion of 36 months on probation. The court also sentenced defendant to serve 28 days in county jail as a condition of probation.

On March 22, 2019, defendant filed a timely notice of appeal. On April 8, 2019, defendant filed an amended notice of appeal. On August 5, 2019, defendant filed a

¹ All further statutory references are to the Penal Code unless otherwise specified.

petition for writ of habeas corpus. On August 20, 2019, we issued an order that the petition for writ of habeas corpus will be considered with the appeal.²

B. FACTUAL HISTORY³

On June 1, 2016, San Bernardino County Sheriff's Detective Antonio Juarez was conducting traffic stops on the 15 freeway near Barstow, California as part of a "highway interdiction team." Detective Juarez was there with the K9 Unit and he had his "drug detection" dog with him.

Around 10:00 a.m., Detective Juarez stopped a Nissan Maxima for following another vehicle too closely on the highway. Defendant was driving and his girlfriend was in the front passenger seat.

Detective Juarez contacted defendant and explained the reason for the stop. The detective asked defendant for his license and car registration. Defendant told the detective that he had a suspended license and the car belonged to a friend. Defendant provided an identification card and the vehicle registration.

Detective Juarez asked defendant to step outside of the vehicle to go over the documentation and to ask a few questions. This was consistent with what the detective normally did. The detective asked defendant where he was driving; defendant explained that he and his girlfriend were taking a trip from San Diego to Las Vegas to visit family.

² We resolve the writ by separate order.

³ Because defendant pled guilty, the factual background is taken from the preliminary hearing transcript, which the parties accepted as part of the factual basis for defendant's plea.

The detective stated that he was not at this point in the process of writing a citation for following too closely or driving without a license. The detective then asked defendant to wait by the car while he conducted a records check of defendant's license. When the detective ran a license check, it confirmed that defendant's license was expired.

After conducting the records check, Detective Juarez exited his vehicle and went back to speak with defendant. At that point, it had been approximately five minutes into the stop. The detective asked defendant if there was anything illegal in the car, like guns or drugs. Defendant said no. When the detective asked defendant for permission to search the car, defendant said yes.

Detective Juarez brought his dog from his vehicle over to the Nissan. The dog alerted at the rear door on the driver's side. Inside the car, the detective discovered 10 packages hidden under the backseat cushion. The packages collectively weighed 4.6 pounds and contained heroin.

DISCUSSION

Defendant contends that the search of the car was unconstitutional. The People contend that defendant waived his claim. As will be discussed below, because we find defendant's contention fails on the merits, we need not consider the People's waiver argument.

A. SEARCH AND SEIZURE PRINCIPLES

“The Fourth Amendment guarantees ‘[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.’ ”

(*Whren v. United States* (1996) 517 U.S. 806, 809-218.) Although a traffic stop

“constitutes a ‘seizure’ of ‘persons’ within the meaning of” the Fourth Amendment, such a seizure is constitutionally “reasonable where the police have probable cause to believe that a traffic violation has occurred.” (*Ibid.*) But “a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution.” (*Illinois v. Caballes* (2005) 543 U.S. 405, 407.) Thus, “[a] seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” (*Ibid.*)

In *Rodriguez v. United States* (2015) 575 U.S. 348 (*Rodriguez*), the United States Supreme Court considered these principles in the context of a canine sniff conducted during a traffic stop. The officer initiated a traffic stop after the defendant drove on the shoulder of the freeway. (*Id.* at pp. 351-352.) The officer checked the records of the driver and passenger and then called for a second officer while he began writing a warning. The officer explained the warning to the driver, and returned the driver’s and passenger’s documentation; the officer then prolonged the stop by an additional seven or eight minutes while he had his dog conduct a sniff that “revealed a large bag of methamphetamine.” (*Id.* at p. 352.) The district court concluded that although the canine sniff was not supported by reasonable suspicion, the additional delay was a constitutionally permissible de minimis intrusion on the defendant’s constitutional rights. (*Id.* at p. 353.) The Eighth Circuit affirmed. (*Ibid.*)

The United States Supreme Court reversed, holding “that a police stop exceeding the time needed to handle the matter for which the stop was made violates the

Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a ticket for the violation." (*Rodriguez, supra*, 575 U.S. at pp. 350-351.) "Authority for the seizure thus ends when [the] tasks tied to the traffic infraction are—or reasonably should have been—completed" (*id.* at p. 354), *unless* "reasonable suspicion of criminal activity justified detaining [the defendant] beyond completion of the traffic infraction investigation" (*id.* at p. 358).

The *Rodriguez* court elaborated on the scope of the traffic-stop mission: "Beyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to [the traffic] stop.' " (*Rodriguez, supra*, 575 U.S. at p. 355.) "Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. [Citations.] These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." (*Id.* at p. 349.) A canine sniff, however, "is not fairly characterized as part of the officer's traffic mission." (*Ibid.*) Thus, police may prolong a traffic stop to conduct a canine sniff only if the need for the sniff is independently supported by reasonable suspicion. (*Ibid.*)

Reasonable suspicion requires "the detaining officer [to] point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." (*People v. Souza* (1994) 9 Cal.4th 224, 231.) The reasonable suspicion

standard “is not a particularly demanding one, but is, instead, ‘considerably less than proof of wrongdoing by a preponderance of the evidence.’ ” (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 146.)

The *Rodriguez* court remanded for a factual determination of whether reasonable suspicion justified detaining the defendant longer than was necessary to complete the traffic-stop mission. (*Rodriguez, supra*, 575 U.S. at p. 358.)

B. STANDARD OF REVIEW

In reviewing the trial court’s denial of a motion to suppress, “we defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

C. ANALYSIS

Defendant does not challenge the validity of the initial traffic stop. Thus, under *Rodriguez*, Detective Juarez was entitled to detain defendant for as long as it took (or reasonably should have taken) to complete the “traffic-stop” mission. (*Rodriguez, supra*, 575 U.S. at p. 354.) This mission included “determining whether to issue a traffic ticket, . . . checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” (*Ibid.*) Defendant, however, argues that “[a]t the time he gave consent to search, [defendant] was illegally seized because the officer had impermissibly prolonged the detention, without individualized suspicion, to embark on a fishing expedition for any

possible evidence of criminal activity.” (See *Florida v. Royer* (1983) 460 U.S. 491, 497 [evidence obtained during unlawful detention is inadmissible notwithstanding defendant’s consent to search during the detention].) “A seizure for a traffic violation justifies a police investigation of that violation. . . . Authority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” (*Rodriguez, supra*, 575 U.S. at p. 348-349.)

In this case, after stopping defendant, Detective Juarez checked and confirmed that defendant’s license was suspended, and investigated the status of the vehicle’s registration—which was not in defendant’s name. Although Detective Juarez was not actually writing a traffic ticket at this time, he was addressing the preliminary matters of defendant’s invalid license and the vehicle’s registration. (*Rodriguez, supra*, 575 U.S. at p. 348-349; see also *People v. Vera* (2018) 28 Cal.App.5th 1081, 1086 (*Vera*) [“The mission includes ‘determining whether to issue a traffic ticket’ and ‘ “ordinary inquiries incident to [the] stop” ’ ”].)

When the trial court ruled on defendant’s motion, it stated as follows: “Even per *Rodriguez*, the Court finds that the search was lawful for the following reasons: No one brought up the fact that this car was not the defendant’s, meaning that there was investigation that needed to be done, in this Court’s opinion, with respect to the officer trying to identify whether this person had the car lawfully or not. Then on top of that, he doesn’t have a valid license. Then on top of that, the license is found to be suspended. The officer would be derelict in his duties not to investigate this further. ¶ So when the Court heard that the officer—or I think he’s a deputy—was going over the paperwork of

the defendant, it stands to reason an objective person would understand that that was probably over whose car this is, why does this person have it, and why do they unlawfully have it. In fact, I'm thinking if it probably took a little bit more than twelve minutes, the Court would not be offended because certain identifications and certain information had to be obtained. [¶] With respect to the consent to search, that was after the confirmation of the suspended license, and law enforcement at that point probably had the right to take the car and to tow it. So it makes sense that he would ask is there anything in this car. It does not offend the Court that he asked a variety of questions, then he brought the canine into play. [¶] None of this rises to the level of suppressing the evidence. The Court rules that the motion to suppress is denied." We agree with the trial court's interpretation of the evidence presented at the hearing.

Nonetheless, defendant argues that because "the officer began to pursue a wholly distinct set of questioning aimed at detecting general criminal wrongdoing, making clear that he had abandoned his diligent pursuit of the violations and was embarking on a fishing expedition. [¶] The broad question fishing for illegal items, followed by the request for consent to search, was not reasonably related to the justification for the detention; it was not a permissible inquiry into the traffic infractions or officer safety." We disagree.

"Questioning during the routine traffic stop on a subject unrelated to the purpose of the stop is not itself a Fourth Amendment violation." (*People v. Brown* (1998) 62 Cal.App.4th 493, 499.) "Mere questioning is neither a search nor a seizure." (*Ibid.*) Although a "traffic detainee is under no obligation to answer unrelated questions, the

Constitution does not prohibit law enforcement officers from asking.” (*Id.* at p. 499.) As long as the questions do not measurably extend the duration of the stop, they are permissible. (*Rodriguez, supra*, 575 U.S. at pp. 350-351; see also *People v. Gallardo* (2005) 130 Cal.App.4th 234, 239 [“we reject the argument that consent requires reasonable suspicion if requesting consent does not otherwise unduly prolong the traffic stop”].) As noted above, the record in this case shows that it took approximately five minutes from when Detective Juarez contacted defendant to when defendant consented to the search. A five-minute traffic stop—when defendant presented with no valid license and a vehicle registration that did not belong to defendant—cannot be deemed impermissible or unreasonable.

Defendant’s reliance on *U.S. v. Chavez-Valenzuela* (9th Cir. 2001) 268 F.3d 719 (*Chavez-Valenzuela*), opinion amended, (9th Cir. 2002) 279 F.3d 1062, and *People v. Lingo* (1970) 3 Cal.App.3d 661 (*Lingo*), is misplaced. In *Chavez-Valenzuela*, the motorist was stopped by a California Highway Patrol officer; detained by the side of the highway; and subjected to a number of “fishing expedition” questions, while a dispatcher checked the license and registration. After the officer learned the documents were valid, he returned the defendant’s documents but asked permission to search his vehicle. The defendant consented, and methamphetamine was found. The court ruled that the detention was unduly prolonged and thus tainted the defendant’s consent, because a reasonable person would not have believed he could disregard the officer’s inquiry even though his documents had been returned. (*Id.* at p. 722.)

In *Lingo*, *supra*, 3 Cal.App.3d 661, the defendant was a passenger in an automobile stopped by officers for not having a rear license plate. The license of the driver had expired, and the defendant produced an out-of-state registration in another person's name, claiming he was the owner and in the process of securing transfer of title documents. One officer saw a phonograph and a portable radio in the car, and suspected they were stolen. Rather than investigating the origin of these items, however, he asked defendant if there were narcotics in the car, which defendant denied. The officer then asked for permission to search, the defendant consented, and the search disclosed marijuana. (*Id.* at p. 663.) The court concluded that the defendant's consent was invalid, as a product of an unjustified detention and interrogation. (*Ibid.*) The court explained that the officers had completed their activity as to the missing license plate, the driver's license, and the registration, made no effort to pursue their suspicions regarding the radio and phonograph, and instead continued to detain the defendant "for an entirely different purpose—namely to make inquiry about an offense which, admittedly, they had no grounds to suspect had been or was being committed." (*Id.* at p. 664.)

Chavez-Valenzuela and *Lingo* are inapposite and unhelpful to our analysis. Unlike *Chavez-Valenzuela*, in this case, there was no evidence that Detective Juarez had decided not to ticket defendant for the traffic infraction. Moreover, defendant's license check came back invalid. Therefore, unlike the defendant in *Chavez-Valenzuela*, the objective of the traffic stop was not concluded when Detective Juarez asked defendant for consent to search the car. The objective was still in progress. Detective Juarez was not going to allow defendant to leave and drive away on a suspended license.

Similarly, in *Lingo*, the consent to search was obtained after “the officers had completed their activity with reference to the equipment, the license, and the registration.” (*Lingo, supra*, 3 Cal.App.3d at p. 664.) In this case, as discussed *ante*, Detective Juarez had not completed his investigation into defendant’s moving violating and suspended license. As noted *ante*, Detective Juarez had yet to start writing a ticket for defendant. (*Vera, supra*, 28 Cal.App.5th at p. 1088 [“The mission of the traffic stop was in fact not finished when the dog sniff began, because the citation had not yet been written”]; *People v. Superior Court (Torres)* (1977) 67 Cal.App.3d 620, 625 [distinguished *Lingo* because “[t]he officers’ discovery of the weapons in the instant case occurred before they could complete their duties regarding the traffic violation”].)

Nonetheless, defendant argues that “[g]iven that the officer could have already reasonably ended the encounter by issuing the tickets, the unrelated investigation prolonged the stop beyond the point necessary to address the traffic infractions. As there was no reasonable suspicion allowing the officer to further detain [defendant] to investigate drugs or other illegal activity, the officer’s actions after exiting his vehicle were impermissible and violated the Fourth Amendment.” Defendant, however, cites no evidence showing how long the detention should have taken Detective Juarez to issue the traffic citation, or that the canine sniff could not have been completed within that timeframe. (*Vera, supra*, 28 Cal.App.5th at p. 1089 [“[the defendant] also did not establish how long it takes [two different officers] to write a citation. [The defendant] did not establish that [one of the officers] took more time than usual to write it. On this record, we cannot conclude that the dog alert occurred after the citation reasonably

should have been issued].) Again, in this case, it took only five minutes from the time Detective Juarez contacted defendant to the time defendant consented to the search.

In sum, we find that the search of defendant's car was constitutional. Hence, the trial court properly denied defendant's motion to suppress evidence.

DISPOSITION

The judgment is affirmed.

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MILLER

Acting P. J.

We concur:

CODRINGTON

J.

FIELDS

J.